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Covenant Aviation Security, LLC and Stephen J. Burke, Jr., Petitioner and SEIU Local 790. Case 20–UD–445

March 30, 2007

DECISION ON REVIEW AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS KIRSANOW
AND WALSH

This case presents the Board with an issue of first impression: whether the showing of interest supporting a deauthorization petition may predate the execution of a contract containing a union-security provision.

On March 23, 2006, the Regional Director for Region 20 issued an administrative dismissal letter dismissing the Petitioner's deauthorization petition as premature on the ground that the signatures supporting the showing of interest for the petition predated an effective union-security clause.¹ The Regional Director found that under the language of Section 9(e)(1), a deauthorization petition can only be processed where a union-security provision is already in existence. The Regional Director reasoned that because the existence of a union-security clause is a condition precedent to the processing of a petition, the showing of interest in support of such a petition must necessarily also postdate the contract containing a union-security provision. Further, the Regional Director found that the legislative history of the 1951 amendments to the Act does not show congressional intent to apply deauthorization prospectively. Finally, the Regional Director determined that Board resources are not prudently spent where a petitioner collected deauthorization signatures before employees had the opportunity to evaluate the benefits that representation might secure.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's administrative dismissal letter and a

¹ The Regional Director found that the petition was filed 2 days prior to the execution and effective date of the contract that contains the union-security clause at issue, but also found that such infirmity could be remedied by the Petitioner's refiling of the petition. No party has requested review of these matters. Consequently, the sole issue before us is whether the petition should be dismissed because the showing of interest was gathered prior to the effective date of the union-security clause. Thus, we disagree with the dissent's finding that the petition should be dismissed as untimely.

request for expedited consideration of the case.² In his request for review, the Petitioner maintained that the Act contains no restrictions relating to the timing of signatures supporting the requisite showing of interest in a deauthorization proceeding, and that, as a matter of policy, employees should not have to wait until after the execution of a contract before instituting the lengthy process involved in securing a deauthorization election.

The Board³ granted the Petitioner's request for review on May 10, 2006. Thereafter, the Petitioner filed a brief on review.⁴

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having carefully considered the entire record in this case, including the Petitioner's brief on review, we find that the deauthorization petition should be processed. Thus, we reinstate the petition and remand this case to the Regional Director for further appropriate action.

I. FACTS

The Employer is a security screening services contractor for the Transportation Security Administration at San Francisco International Airport (SFO). On October 3, 2005, the Employer recognized the Union upon the Union's demonstration that it had obtained authorization cards signed by a majority of employees in a bargaining unit consisting of security screeners, baggage handlers, and certain specialists. The panel of neutrals that conducted the card check determined that 555 out of the 1010 unit employees designated the Union as their collective-bargaining representative.⁵

The Employer and the Union commenced contract negotiations around November 18, 2005. The Union first shared the terms of a tentative agreement with the employees around December 28, 2005. Between December

² The Petitioner noted that the Board had pending before it the issue of whether Board jurisdiction should be exercised over airport security screeners such as the unit employees. Subsequent to the filing of the Petitioner's request for review, however, the Board in *Firstline Transportation Security, Inc.*, 347 NLRB No. 40 (2006), asserted jurisdiction over private employers providing airport security services. It is therefore clear that the unit employees fall under the Board's jurisdiction.

Although he adheres to his dissent in *Firstline*, Member Kirsanow notes that no party currently argues that the Board should not assert jurisdiction here.

³ Chairman Battista and Member Kirsanow, Member Walsh dissenting.

⁴ The Petitioner refiled its request for review as its brief on review.

⁵ On May 10, 2005, the Region had conducted a secret ballot election in Case 20–RC–17896 among employees in the same bargaining unit as is involved in this case. There, 235 employees voted in favor of, and 396 employees voted against, representation by United Screeners Association Local 1 (Screeners). Screeners filed objections to the election relating to alleged unlawful conduct on the part of the Employer as well as the Union. The objections were overruled. The Regional Director certified the election results on August 6, 2005.

28 and 31, 2005, the employees ratified the contract by a vote of 378 to 229. The contract went into effect on January 13, 2006, and bears a term of January 1, 2006 through December 31, 2008. The contract contains a union-security clause.

The Petitioner filed this petition on January 11, 2006, after negotiations were completed and the contract had been ratified, but 2 days before the Employer and the Union actually executed the contract. In addition to listing his own name on the petition, the Petitioner also listed himself as vice president of the Screeners. The signed showing-of-interest statements that the Petitioner collected explicitly affirmed that the signing employees wished to deauthorize a “proposed union security clause.” Almost 70 percent of the signatures submitted with the petition bear dates in October 2005, after the Union was recognized. About 92 percent of the signatures predate the December 28 through 31, 2006 ratification vote. All of the signatures predate the contract’s execution.

The nature of the Employer’s work requires that the Employer have bargaining unit members on duty 24 hours a day, 7 days a week. Work schedules among unit employees are therefore varied. Also due to the type of work performed, bargaining unit members work in multiple locations throughout SFO.

II. APPLICABLE LAW AND ANALYSIS

After examining the language of Section 9(e)(1) of the Act, the legislative history behind the 1951 amendments to the Act, and Board law relating to deauthorization petitions, we find that the Regional Director erred in dismissing this petition on the basis that it was supported by signatures predating an effective union-security clause. Requiring the Petitioner to have waited until after a contract containing a union-security provision came into effect before obtaining signatures in support of a deauthorization petition impermissibly delayed the effectuation of employees’ statutory right to rescind the effect of a union-security clause.

Section 9(e)(1), the statutory provision that governs deauthorization of union-security clauses, provides as follows:

Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3), of a petition alleging the desire that such authority be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

Section 9(e)(1) does not squarely answer the question presented by this case. Although it is clear from the statutory language that, *when filed*, a deauthorization petition must be supported by at least 30 percent of employees “covered by” a contract containing a union-security provision, Section 9(e)(1) is devoid of language as to *when* the showing of interest must be gathered. The employees in the instant case are “covered by an agreement” containing a union-security clause, and 30 percent of the employees so covered have supported a petition to get rid of that clause. The fact that the 30 percent expressed their desire prior to the coverage does not clearly invalidate their desire.

Contrary to the dissent’s contention, the “plain meaning” of Section 9(e)(1) does not resolve the question presented in this case. Our colleague emphasizes that Section 9(e)(1)

explicitly says that a deauthorization petition must be supported by 30 per cent or more of employees “*in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3).*” (Emphasis supplied.)

We agree that Section 9(e)(1) says as much; but that is not all it says. Our colleague omits from his analysis the crucial introductory clause to that provision. Bringing that clause into the analysis, we find that the statutory language is unclear as to whether the showing of interest in support of that petition may be gathered in advance of an agreement containing a union-security clause.

It is possible either that Congress did not contemplate the question of whether the signatures supporting a showing of interest in a deauthorization petition may predate an effective contract containing a union-security clause, or that Congress did consider the question but left it to the Board to regulate. Either way, the fact of the matter is that the statutory language is inconclusive, and thus it falls to the Board as the agency charged with administering the Act to fill in the statutory gap. In doing so, we are guided by the Act itself, its legislative history, and applicable policy considerations. *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 3 (2006).

As to the Act itself, although it does not conclusively resolve the issue presented, it is certainly consistent with processing a 9(e)(1) petition supported by preagreement signatures. Section 9(e)(1) reflects Congress’s intent to subject union-security arrangements to employee veto. Our holding here clears away a perceived procedural obstacle to a timely election in which employees may decide whether to cast that veto.

Like the statutory language, the legislative history behind the 1951 amendments to the Act also does not speak directly to the issue before us; but it is certainly consis-

tent with our holding that the “covered by” language of Section 9(e)(1) applies only to the filing of a deauthorization petition and not to the dates of the signatures gathered for a showing of interest to support such a petition.

Section 9(e) was initially enacted as part of the 1947 amendments to the Act. In its inception, then-Section 9(e)(1) required the Board to conduct an election affirmatively authorizing a union to seek a union-security clause before a union could negotiate such a provision with an employer. Under former Section 9(e)(1), a union that was the employees’ 9(a) representative could file a petition alleging that 30 percent or more of unit employees wished “to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment.” If there was a valid union-security clause pursuant to former Section 9(e)(1), Section 9(e)(2) of the 1947 amendments required that the Board conduct a secret ballot election to determine whether to revoke the union-security provision upon the filing of a petition signed by 30 percent or more of unit employees covered by a union-security clause alleging that they “desire that such authority be rescinded.”⁶

In 1951, Congress amended the Act to eliminate the requirement that a union receive prior authorization from unit employees before negotiating and obtaining a union-security clause with an employer. Congress also reworded the deauthorization provision to its current version and designated it Section 9(e)(1).

In amending the statute in 1951, Congress’ stated goal was to avoid the waste of Board resources inherent in authorization elections, while simultaneously maintaining employees’ ability to free themselves from a union-security arrangement if they so desired. The 1951 House of Representatives Report stated that the purpose of the statutory change was “to dispense with the requirement of existing law that an election be held before a labor organization and an employer can make a union-shop agreement” because such elections “have imposed a heavy administrative burden on the Board, have involved a large expenditure of funds, and have almost always resulted in a vote favoring the union shop.” H.R. Rep. No. 1082, 82nd Cong., 1st Sess., at 2–3 (1951).⁷ Eliminating authorization elections, the House report continued, would “permit the Board to devote its time to more expeditious handling of its heavy docket of representation and unfair-labor-practice cases.” *Id.* Significantly, in enacting the 1951 amendments, Congress did not ex-

press a preference for union-security arrangements. Neither did it choose to return to the pre-1947 status, under which there was no Board-mandated deauthorization process and the issue of rescinding a union-security provision was left to private parties to handle. Rather, Congress sought to eliminate what it viewed as the administrative inefficiencies occasioned by former 9(e)(1)’s authorization requirement, while at the same time preserving the right of employees to deauthorize an unwanted union-security arrangement.

In sum, the legislative history is inconclusive as to the issue presented here. It underlines, however, what the language of Section 9(e)(1) itself makes plain: Congress’ intent to safeguard the right of employees to deauthorize union security. Mindful of that intent, and in the absence of more specific guidance in either the language of the statute or the legislative history, we consider, as a matter of policy, what resolution of the issue at hand best effectuates Congress’ purpose of protecting employee free choice. For the following reasons, we find that purpose best effectuated by processing the instant petition.

If we were to dismiss the petition on the basis of an assertedly premature showing of interest, we would effectively require these employees to engage in the essentially ministerial task of reiterating their already expressed desire to secure a deauthorization vote. The amount of time required to regather a showing of interest could be particularly lengthy in this case: the unit here is large and consists of employees who work varying shifts at different locations. Thus, dismissing the petition does not, as our dissenting colleague maintains, leave intact the employees’ right to *promptly* deauthorize the union-security clause. The employees would remain subject to union-security obligations during the time this process would consume, a critical fact that the dissent wholly ignores. As shown below, it is clear that the law does not countenance such delay.

In addressing the current version of Section 9(e)(1) and its legislative history, the Board has recognized congressional intent to protect employees from undesired union-security provisions by *timely* effectuating their wishes to vote on deauthorization. In *Great Atlantic & Pacific Tea Co.*, 100 NLRB 1494 (1952), the Board rejected the union’s contention that a deauthorization vote should be prospective only, i.e., that an existing union-security agreement should remain effective for the remainder of a contract’s term. The Board found that a union-security clause is valid “subject to a condition subsequent” and that Congress did not aim to postpone until after a contract had run its course the employees’ will regarding union security. *Id.* at 1495. By stating in the House Report to the 1951 amendments that the bill “con-

⁶ Prior to the 1947 amendments, the Act contained neither an authorization nor a deauthorization process.

⁷ The House of Representatives Report repeated in substance the Senate Report.

tinue[d] to safeguard employees” against union-shop agreements of which a majority disapproved, the Board reasoned, Congress preserved the right of employees to be free, as they were under the 1947 amendments, of compulsory union membership if a majority of them so desired. *Id.* at 1497 (“[O]nly by holding that an affirmative deauthorization vote immediately relieves employees of the obligations imposed by an existing union-security agreement” can the Board “give effect to the basic congressional objective, unchanged by amendments directed solely at procedural relief, of not imposing a union-security agreement upon an unwilling majority.”). Thus, a *timely* effectuation of employee free choice was deemed essential.

Similarly, in *Andor Co.*, 119 NLRB 925, 927–928 (1957), the Board refused to dismiss a deauthorization petition where the union-security clause at issue exceeded the permissible limits of the proviso in Section 8(a)(3). The Board held that to dismiss the petition would contravene Congress’s intent in enacting the 1951 amendments that employees would continue to enjoy a “safety valve” whereby they could remove undesired union-security provisions. *Id.* at 928. Dismissing the petition, the Board explained, would subject employees to “continued restraint and coercion until such time as appropriate charges could be filed, processed, and adjudicated,” and might “effectively destroy the statutory right of employees to eliminate union-security provisions.” *Id.*

We conclude, therefore, that Congress’s intent to safeguard employees’ right to rid themselves of unwanted union-security arrangements, together with the Board’s policy favoring timely effectuation of employees’ deauthorization efforts, weigh in favor of reinstating the petition here.

Permitting the deauthorization process to proceed in this case comports with Board law relating to Section 9(e)(1) in allowing employees to “vote immediately” to relieve themselves of the “obligations imposed by an existing union-security agreement.” *Great Atlantic & Pacific Tea Company*, 100 NLRB at 1497. Mandating that petition signatures postdate the execution of a union-security provision would unjustly postpone employees’ expression in much the same way as would allowing a union-security clause to remain valid through the contract’s term notwithstanding a deauthorization vote. *Id.* at 1494. Given the significant amount of time it would likely take for the Petitioner to regather petition signatures, dismissing the petition would subject employees to “continued restraint and coercion” during the signature-collection process and would needlessly infringe upon

“the statutory right of employees to eliminate union-security provisions.” *Andor Co.*, 119 NLRB at 928.

The dissent’s position that *Atlantic & Pacific Tea Co.*, *supra*, and *Andor Co.*, *supra*, are inapposite is based on his conclusion that a plain reading of the statute answers the question presented by this case. For the reasons explained above, that conclusion is incorrect. Similarly unavailing is the dissent’s attempt to distinguish this case from the above cases on the ground that the delay involved here is comparatively “minimal.” Both legislative history and Board law contemplate the prompt removal of a union-security clause once the majority of unit employees no longer support such a provision. That the delay in effectuating a vote here may be less lengthy than delays in other factual circumstances does not diminish the imperative of facilitating an “immediate” vote. *Great Atlantic & Pacific Tea Co.*, 100 NLRB at 1497.

Indeed, the concept of acting in anticipation of a prospectively effective union-security clause is not a notion foreign to Board law. In *Berbiglia, Inc.*, 233 NLRB 1476, 1476 fn. 2 (1977), the Board explicitly recognized the proposition that parties to a contract can agree to a prospectively effective union-security provision. The Board rejected the employer’s argument that the union’s demand for a union-security clause was unlawful because employees, within the past year, had voted to rescind a previous union-security agreement. The Board held that although the 8(a)(3) proviso language makes clear that a deauthorization vote within the past 12 months prohibits an employer from entering into a union-security clause, a union demand for a union-security provision within the same year as a deauthorization election did not privilege the employer to refuse to bargain in good faith because the employer could have either rejected the demand altogether or *insisted that the union-security provision not be effective within the proscribed 12-month period*. *Id.* at 1476 fn. 2 (emphasis added). In short, since employers must bargain on demand concerning a union-security clause that cannot presently be given effect, employees should be permitted to begin the process of rejecting a union-security arrangement that is not yet presently in effect. *Berbiglia* thus bolsters our conclusion that signatures gathered in expectation of a future union shop can be used to support a deauthorization petition once the parties execute the contract.

Moreover, as a matter of policy, there is little sense in requiring the Petitioner to have waited until the Employer and the Union formally executed a union-security clause before collecting petition signatures. The Union had been designated as the employees’ bargaining representative, and the Petitioner reasonably believed that a

union-security provision was imminent. We agree with the Petitioner that waiting for the parties to execute the contract serves to needlessly—and, from the perspective of many employees, arbitrarily—delay the employees’ right to be relieved of a union-security provision should the majority so will.

That a deauthorization election in this case will involve, as the Regional Director pointed out and the dissent emphasizes, a substantial expenditure of Board resources, given the varied working hours and locations of bargaining unit members, is no reason to delay the employees’ statutory right to such an election.⁸ Under the dissent’s preferred approach, that expenditure of Board resources will be required anyway, assuming the Petitioner regathers the showing of interest.

The Regional Director and the dissent also question the reliability of a showing of interest obtained before employees know what contractual benefits a union has negotiated on their behalf. We do not agree that employees cannot know their minds on the subject of deauthorization independently of any contract. Employees who may choose to pay union dues in recognition to the union of a job well done may nevertheless object, and know they object, to *compulsory* financial support of a union irrespective of the possible benefits of union representation. Indeed, that is what happened here.⁹ The employees signed the showing of interest without regard to what the Union might obtain in bargaining. It is undisputed that the signed statements made clear that signatories wished to deauthorize a “proposed,” rather than an existing, union-security clause. To presume that employees cannot make an informed choice regarding the idea of a union-security clause before a contract becomes effective robs employees of the ability to express the position that they do not desire a union-security clause in any event.¹⁰ Notably, the dissent provides no support for his assertion that the desire of “most” employees to retain or revoke a union-security clause “surely relates directly” to their perception of the benefits of representation. Moreover, even assuming that the contract a union obtains might affect some employees’ views of union security, a deau-

thorization vote cannot be held before employees are “covered by” a collective-bargaining agreement. Thus, that effect would be reflected in the vote. Our approach merely permits employees opposed to union security on *any* terms to secure a speedier referendum.

Finally, we note that in a representation case, the Board will process a petition supported by a showing of interest even if it was gathered prior to the time when a question concerning representation could be raised. See, e.g. *Sheffield Corp.*, 108 NLRB 349, 350 (1954) (administrative investigation into a petitioner’s showing of interest “has no bearing on whether a question concerning representation exists”). Thus, a petition filed at the open period of a contract will be processed even if the showing of interest was gathered prior to that period.

We recognize that the showing of interest requirement in these representation cases is non-statutory, whereas the showing of interest language in UD cases is statutory. However, as discussed above, the statutory language does not clearly answer the issue of when the showing of interest must be gathered. In our view, the purpose of a showing of interest is to save the Board from expending time and money on needless elections. The election here is not needless, as it is desired by at least 30 percent of the employees.

Finally, we note that the Board has long found union authorization cards signed even more than a year prior to the filing of a petition to be “current” for the purposes of a representation petition seeking certification. See, e.g., *Carey Mfg. Co.*, 69 NLRB 224, 224 fn. 4 (1946). As the majority of the signatures here are dated only 4 months before the Union and Employer executed the contract containing the union-security provision, they can hardly be considered stale. Under the facts of this case, we find that the Regional Director erred in dismissing the petition as untimely.

II. CONCLUSION

After carefully considering the language of Section 9(e)(1), the legislative history behind that statutory provision, and Board law governing deauthorization elections, we believe that requiring the signatures underlying the showing of interest to postdate the effective union-security provision here would unjustly impede the right of employees to deauthorize a union shop.

ORDER

IT IS ORDERED that the petition be reinstated, and that this matter be remanded to the Regional Director for further appropriate action.

⁸ The Regional Director stated that the May 10, 2005 election among members of the same bargaining unit as is involved here consumed at least 100 hours of Board agent time.

⁹ In addition, some employees may choose not to pay dues irrespective of what kind of contract the union may secure. Whatever one might think about such “free riders,” the Act gives employees the right to reject union security and to be “free riders.”

¹⁰ Further, that the petition here appears rooted in an inter-union battle does not detract from the petition’s legitimacy. See, e.g., *Accurate Molding Corp.*, 107 NLRB 1087 (1954) (finding irrelevant the fact that the deauthorization petition was inspired and sponsored by a rival union).

Dated, Washington, D.C. March 30, 2007

Robert J. Battista, Chairman

Peter N. Kirsanow, Member

MEMBER WALSH, dissenting.

My colleagues have decided to process a deauthorization petition that was supported by a showing of interest that predates the contract containing the union-security clause at issue. Section 9(e)(1) of the Act, however, for sound policy reasons, clearly contemplates that the signatures gathered in support of a deauthorization petition may be collected only after the effective date of a collective-bargaining agreement containing a union-security clause. Accordingly, I dissent.¹

I. FACTS

No party disputes the facts. The Employer recognized the Union upon the Union's showing of majority support in early October 2005, and the Employer and the Union began negotiating a contract in mid-November, 2005. The unit employees' first opportunity to examine the terms of a tentative agreement occurred on December 28, 2005. A few days later, on December 31, 2005, the unit employees voted to ratify the contract. The contract became effective on January 13, 2006, and contains a union-security clause.

The Petitioner filed the deauthorization petition on January 11, 2006. All of the signatures supporting the petition predate the contract's execution. Approximately 92 percent of the signatures predate the ratification vote. Almost 70 percent of the signatures are dated October 2005, about 2 months before the union employees even saw the terms of the proposed contract.

II. ANALYSIS

The text of Section 9(e)(1) of the Act states:

Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3), of a petition alleging the desire that such authority be rescinded,

the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

See also National Labor Relations Board Rules and Regulations, Section 102.83;² National Labor Relations Board Casehandling Manual, Part II, § 1500 et seq., § 11001.7.

As my colleagues have themselves previously recognized, our analysis in cases such as these must start with the statutory language itself, and we must be guided first by the plain meaning of the statute. See *Oakwood Healthcare, Inc.*, 348 NLRB No. 37, slip op. at 8 fn 40 (2007), citing *Natural Resources Defense Council, Inc. v. Muszynski*, 268 F.3d 91, 98 (2d Cir. 2001) (statutory language should be interpreted according to its plain meaning). The plain meaning of Section 9(e)(1) is that the showing of interest for a deauthorization petition must be gathered at a time when the employees are actually subject to a union-security provision. The statute explicitly says that a deauthorization petition must be supported by 30 percent or more of the employees "*in a bargaining unit covered by an agreement between their employer and a labor organization made pursuant to Section 8(a)(3).*" (Emphasis supplied.)

Sound policy considerations underlie the statute's requirement that the showing of interest supporting a deauthorization election must be collected after the employees are subject to a union-security clause. An employee's decision regarding whether or not to financially support a union is certainly related to the benefits the employee believes are achieved through union representation. A showing of interest obtained before employees know what contractual benefits a union has negotiated on their behalf is therefore a very poor indicator of the employees' interest in deauthorization. While it is certainly possible, as the majority posits, that some employees may object to a union-security provision "without regard to what the union might obtain in bargaining," the desire of most employees to retain or revoke a union-security provision surely relates directly to the benefits they deem to come from union representation. Thus, the statute quite reasonably requires that the showing of interest to support a deauthorization petition must be gathered after the collective-bargaining agreement with a union-security clause becomes effective, so that the employees have an opportunity to assess the benefits the Union has obtained

¹ I would also dismiss the petition for another reason. As my colleagues acknowledge, Sec. 9(e)(1) also provides that a petition cannot be *filed* until the agreement containing the union-security provision is effective. In this case, the petition was filed before the agreement was effective. Notwithstanding the fact that it *could* easily be re-filed after the contract's effective date, as far as we know no new petition has in fact been filed. Accordingly, as this petition is clearly untimely under even under my colleagues' view, it should be dismissed.

² Sec. 102.83 reads:

A petition to rescind authority of a labor organization to make an agreement requiring as a condition of employment membership in such labor organization may be filed by an employee or group of employees on behalf of 30 percent or more of the employees in a bargaining unit covered by such an agreement.

before deciding whether they wish to revoke the union-security clause.

Dismissing the petition is also consistent with the legislative history behind Section 9(e)(1). In eliminating authorization elections and devising the current statutory scheme, Congress explicitly aimed to avoid the unnecessary and inefficient expenses involved in the authorization process, while simultaneously protecting the right of employees to choose to free themselves of an unwanted union-security clause. H.R. Rep. No. 1082, 82nd Cong., 1st Sess., at 2-3 (1951).

Using Board resources to conduct an election when the majority of the signatures supporting the petition were collected before the parties even began negotiating a contract exemplifies the kind of inefficiency that Congress sought to eliminate in doing away with authorization elections. A deauthorization election here will undoubtedly involve a substantial expenditure of Board resources given the varied hours and locations of bargaining unit members. Such an expenditure is unwise where employees signed the petition before they even had a reasonable chance to evaluate the benefits of the collective-bargaining agreement and the union-security clause contained in it.

At the same time, dismissing the petition leaves intact the right of employees to promptly deauthorize the union-security clause if they desire to do so. Employees are free to gather signatures in support of the petition as soon as a contract becomes effective, and the employees' right to revoke a union-security provision hence remains as undisturbed and as immediate as Congress intended it to be.

In finding that Section 9(e)(1) "does not squarely answer the question presented by this case," the majority impermissibly reaches beyond the Act's plain language to conclude that Congress may have meant to treat the showing of interest stage distinctly from the rest of the deauthorization process. The majority proffers only far-fetched explanations to prop up its faulty conclusion.

First, the majority strains to find an ambiguity in the statutory language that simply is not there. Apparently because of the use of the phrase "Upon the filing," the majority insists that it is possible to interpret Section 9(e)(1) to mean that the 30 percent showing-of-interest requirement is satisfied if the employees who signed the showing of interest were covered by a union-security agreement "Upon the filing" of the petition. This interpretation is unreasonable. The language is clear and unambiguous. In the context of Section 9(e)(1), "Upon the filing" is simply a phrase which introduces the final phrase of Section 9(e)(1); i.e., "Upon the filing" of the petition, . . . "the Board shall take a secret ballot . . ." in a

deauthorization election. There is nothing else in the text or context of the provision which suggests that employees only need to be covered by a union-security provision at the time the petition is filed. To the contrary, the first sentence clearly states that the petition must be filed "by 30 per centum or more of the employees covered by . . ." a union-security agreement. The meaning of this language could not be much clearer.

Next, the majority states that Congress possibly either "did not contemplate" the showing of interest requirement relating to Section 9(e)(1), or did contemplate the matter but left the issue for the Board to handle. The majority cites nothing to support these conjectures. The Board is not free to speculate as to Congressional intent where—as here—the text of the statute clearly addresses the question at hand. The plain language of the Act dictates that the signatures supporting a deauthorization petition must be signatures of employees who are already subject to an effective union-security provision. Congress, therefore, clearly did contemplate the showing-of-interest requirement for a deauthorization petition and plainly prescribed how it was to be administered.

Additionally, the majority maintains that Board law interpreting the legislative history of the 1951 Act weighs in favor of allowing the deauthorization process to proceed. The cases the majority cites in support of this argument, however, are clearly distinguishable. In *Great Atlantic & Pacific Tea Co.*, 100 NLRB 1494 (1952), the Board rejected the union's argument that a union-security provision should remain effective through the contract's term notwithstanding a deauthorization vote. In *Andor Co.*, 119 NLRB 925 (1957), the Board refused to dismiss the deauthorization petition where the union-security clause was invalid under the 8(a)(3) proviso because dismissing the petition would force employees to remain subject to the clause while unfair labor practice charges were filed, processed, and adjudicated.

Both of these cases involve questions that a plain reading of the statute cannot answer. The instant case, in contrast and as I explain above, is easily resolved by a straightforward reading of Section 9(e)(1). Furthermore, the extent of the delays at issue in the *Great Atlantic & Pacific Tea Co.*, supra, and *Andor Co.*, supra, would have posed far greater restraints on employee free choice than the minimal delay that would be occasioned by dismissing the petition in this case. The employees here would have the opportunity to gather signatures in support of a deauthorization petition as soon as they became subject to the union-security clause.³

³ The majority's reliance on *Berbiglia, Inc.*, 233 NLRB 1497 (1977), is similarly misplaced. In *Berbiglia*, the Board held that the parties can agree to a prospective union-security clause even if it was proposed

III. CONCLUSION

For sound policy reasons, Section 9(e)(1) of the Act clearly requires that the showing of interest supporting a deauthorization petition must be signed by employees who are already covered by a collective-bargaining agreement containing a union-security clause. For this

within 1 year of a valid deauthorization election. The holding in that case simply implicates none of the statutory or policy issues that the facts of this case trigger.

reason, I would affirm the Regional Director's decision to dismiss the decertification petition.

Dated, Washington, D.C. March 30, 2007

Dennis P. Walsh,

Member

NATIONAL LABOR RELATIONS BOARD